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Alexandria, VA 22313-1450
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Vernice J. Harper
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Baltimore, MD 21206

MAILED

MAR 05 2012

OFFICE OF PETITIONS

In re Patent of Vernice J. Harper	:	
Patent No. 6,348,047	:	
Issue Date: February 19, 2002	:	Letter
Application No. 09/522,499	:	
Filing Date: March 10, 2010	:	
For: Feminine Hygiene Article With	:	
Upstanding Member	:	

Request for Information

The 7.5 year maintenance fee could have been paid from February 19, 2009, to August 19, 2009, or with a surcharge, from August 20, 2009, to February 19, 2010. The fee was not paid. As a result, the patent expired on February 20, 2010.

A petition under 37 C.F.R. § 1.378(b) was filed January 24, 2012.

The petition states Petitioner believed the "7yrs 6mths" maintenance fee was "due in Dec 2012 because [December 2012 was] 6 months prior to [the] actual Due Date in 2013."

The total fee due with the petition is \$2,125, which is the sum of \$1,425 for the 7.5 year maintenance fee and \$700 for the required surcharge. Petitioner has only submitted \$1,810. Although the \$1,810 is sufficient to cover the surcharge, the sum is not sufficient to cover the full surcharge.

If Petitioner wishes for the Office to address the merits of the petition, Petitioner must submit an additional \$315 within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. The response to this Requirement for Information should include a cover letter entitled "Response to Request for Information." The failure to file a reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

If Petitioner does not wish to submit the additional \$315, Petitioner may request a refund of the \$1,810 submitted January 24, 2012. A request for a refund of the \$1,810 may be sent to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this letter should accompany any request for refund.

Although the Office will not address the merits of the petition, the Office notes Petitioner's explanation for the delay in payment of the 7.5 year fee is ambiguous. Petitioner states she believed the 7.5 year fee was due six months after December 2012. However, Petitioner has failed to explain why Petitioner would believe the 7.5 year maintenance fee, instead of being due 7.5 years after the issuance of the patent, would be due approximately 11.5 years after the issuance of the patent. The fee due 11.5 years after the issuance of the patent is the 11.5 year maintenance fee. Therefore, Petitioner appears to actually be referring to the 11.5 year maintenance fee.

The Office strongly suggests any response to the instant request, unless the response is a petition under 37 C.F.R. § 1.378(c), *clearly and fully* discuss:

- (1) The date Petitioner believed the 7.5 year fee was due,
- (2) Petitioner's basis for believing the 7.5 year fee was due on the date in (1),
- (3) Evidence or arguments sufficient to establish Petitioner's failure to know the date the 7.5 year maintenance fee was due was unavoidable, and
- (4) All steps taken by Petitioner to ensure the 7.5 year maintenance fee would be paid on or before the date in (1).

Petitioner may wish to note, with the possibility of *extremely rare* exceptions, delay in payment of a fee resulting from a lack of knowledge of patent statutes, patent rules, and the Manual Patent for Examining Procedure is not unavoidable delay.

Petitioner may file a petition under 37 C.F.R. § 1.378(c) in response to the instant request instead of pursuing relief under 37 C.F.R. § 1.378(b) or requesting a refund of the \$1,810 filed January 24, 2012. A copy of a blank form which may be used to file such a petition is attached. A petition under 37 C.F.R. § 1.378(c) is different than a petition under 37 C.F.R. § 1.378(b) in two main respects.

- (1) (A) A petition under 37 C.F.R. § 1.378(b) must prove the entire delay in payment of a fee was unavoidable, and
(B) A petition under 37 C.F.R. § 1.378(c) merely needs to state the delay in payment of the fee was unintentional.
- (2) (A) The surcharge for a petition under 37 C.F.R. § 1.378(b) is \$700, and
(B) The surcharge for a petition under 37 C.F.R. § 1.378(b) is \$1,640.

Since Petitioner has already submitted \$1,810, the remainder of the fees due if a petition under 37 C.F.R. § 1.378(c) is \$1,255 (\$1,425 + \$1,640 - \$1,810).

The address given on the petition differs from the address of record and the file does not indicate a change of address has been submitted in this case. If appropriate, a request to change the address of record should be filed. A copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record. A form which may be used to change the address of record is attached.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.¹
Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney
Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attachments: Petition Under 37 C.F.R. § 1.378(c) Form
Change of Address Form

¹ General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.